

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BARRET CHANDLER,

Plaintiff,

-against-

THE CITY OF NEW YORK; NEW YORK CITY POLICE
DEPARTMENT; POLICE OFFICER, CYNTHIA
ROSARIO, SH#20736; POLICE OFFICER, JOSEPH
GALLAGHER, SH#10008; POLICE OFFICER, JOSE
MORALES, SH#17015; POLICE OFFICER, MIKE
BANNANO, MIDTOWN SOUTH; POLICE OFFICER,
PATRICIA LEZCANO, SH#11643; POLICE
SERGEANT, ROBERT REHILL, MIDTOWN SOUTH;
KEVIN ALSTON, CHAMPS DEPT. STORE
EMPLOYEE; CARLOS DOE, HEAD OF SECURITY
CHAMPS DEPT. STORE; LEO DOE, CHAMPS DEPT.
STORE CLERK; AND THEIR EMPLOYEES AGENTS,
SERVANTS, IN THEIR OFFICIAL AND UNOFFICIAL
CAPACITIES,

Defendants.

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**ANSWER TO THE
AMENDED COMPLAINT ON
BEHALF OF DEFENDANTS
CITY OF NEW YORK, NEW
YORK CITY POLICE
DEPARTMENT, POLICE
OFFICER GALLAGHER
AND POLICE OFFICER
LEZCANO**

07 CV 10412 (PAC)(KNF)

Jury Trial Demanded

Defendants City of New York (“City”), New York City Police Department
(“NYPD”), Police Officer Joseph Gallagher and Police Officer Patricia Lezcano, by their
attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for their answer to
the amended complaint, respectfully allege, upon information and belief, as follows:¹

¹ Defendants respectfully submit that NYPD is not a suable entity. In addition, on
information and belief, the individuals identified in the caption of the amended complaint as
Police Officer Cynthia Rosario, Police Officer Jose Morales, Police Officer Mike Bannano, and
Sergeant Robert Rehill, whom plaintiff purports to name as defendants, have not been served
with a copy of the summons and amended complaint and are therefore not defendants in this
action at this time.

1. Deny the allegations set forth in paragraph “I” of the amended complaint and all of its subparts, except admit that plaintiff purports to name the parties as stated therein.

2. As plaintiff has alleged that paragraph “II.A.” of the amended complaint is not applicable, defendants submit that no response is required.

3. As plaintiff has alleged that paragraph “II.B.” of the amended complaint is not applicable, defendants submit that no response is required.

4. As plaintiff has noted that paragraph “II.C.” of the amended complaint is not applicable, defendants submit that no response is required.

5. Deny the allegations set forth in paragraph “II.D.” and the attachments contained on pages “3-7b” of the amended complaint, except admit that plaintiff was arrested on or about February 17, 2005 at approximately 3:00 p.m. at or around 2 Pennsylvania Plaza on charges of Criminal Possession of a Weapon in the Third Degree, and deny knowledge or information sufficient to form a belief as to the truth of the allegations of the individuals identified as Kevin Alston, Carlos Doe or Leo Doe.

6. Deny the allegations set forth in paragraph “III” of the amended complaint.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “IV” of the amended complaint and all of its subparts, except admit that plaintiff filed a complaint with the Civilian Complaint Review Board on or about July 26, 2005.

8. Deny the allegations set forth in paragraph “V” of the amended complaint, except admit that plaintiff purports to seek relief as stated therein.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “VI” of the amended complaint and all of its subparts.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

10. The amended complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

11. Defendants have not violated any rights, privileges or immunities secured to plaintiff by the Constitution or laws of the United States or the State of New York or any political subdivision thereof, nor have defendants violated any act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

12. Defendants Gallagher and Lezcano have not violated any clearly established constitutional or statutory right of which a reasonable person would have known and therefore are protected by qualified immunity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

13. At all times relevant to the acts alleged in the complaint, defendants acted reasonably in the proper and lawful exercise of their discretion.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

14. Any injury alleged to have been sustained resulted from plaintiff’s own culpable or negligent conduct and/or the intervening conduct of third parties and was not the proximate result of any act of the defendants.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

15. Plaintiff’s claims may be barred, in whole or in part, by Heck v. Humphrey, 512 U.S. 477 (1994).

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

16. Plaintiff's claims may be barred, in whole or in part, because plaintiff failed to comply with all conditions precedent to suit.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

17. Plaintiff's claims may be barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

18. Plaintiff's claims may be barred, in whole or in part, by the applicable statute of limitations period.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE:

19. Plaintiff provoked any incident.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE:

20. The actions of any police officers involved were justified by probable cause.

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE:

21. NYPD is a non-suable entity.

WHEREFORE, defendants City of New York, New York City Police Department, Police Officer Joseph Gallagher and Police Officer Patricia Lezcano request judgment dismissing the amended complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
August 8, 2008

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants City, NYPD, Gallagher
and Lezcano
100 Church Street
New York, New York 10007
(212) 788-1575

By: /s/
Bradford C. Patrick
Assistant Corporation Counsel
Special Federal Litigation Division

To: BY MAIL
Barret Chandler, DIN #06-A-4122
Plaintiff Pro Se
Upstate Correctional Facility
P.O. Box 2001
309 Bare Hill Road
Malone, NY 12953

DECLARATION OF SERVICE BY FIRST CLASS MAIL

I, Bradford C. Patrick declare, pursuant to 28 U.S.C. § 1746, under the penalty of perjury that on **August 8, 2008** I served the annexed **Answer to the Amended Complaint on Behalf of Defendants City of New York, New York City Police Department, Police Officer Gallagher and Police Officer Lezcano** upon the following individual by depositing a copy of the same, enclosed in a first class postpaid properly addressed wrapper, in a post office/official depository under the exclusive care and custody of the United States Postal Service, within the State of New York, directed to the said plaintiff pro se at the address set forth herein, being the address designated by said plaintiff for that purpose, to wit:

Barret Chandler, DIN #06-A-4122
Plaintiff Pro Se
Upstate Correctional Facility
P.O. Box 2001
309 Bare Hill Road
Malone, NY 12953

Dated: New York, NY
August 8, 2008

/s/

Bradford C. Patrick
Assistant Corporation Counsel
Special Federal Litigation

Index No. 07 CV 10412 (PAC)(KNF)

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SOUTHERN DISTRICT OF NEW YORK

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-against-

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OF SECURITY CHAMPS DEPT. STORE; LEO DOE,
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GALLAGHER AND POLICE OFFICER
LEZCANO**

MICHAEL A. CARDOZO

*Corporation Counsel of the City of New York
Attorney for Defendants City, NYPD, Officer Gallagher
and Officer Lezcano
100 Church Street
New York, N.Y. 10007*

*Of Counsel: Bradford C. Patrick
Tel: (212) 788-1575
NYCLIS No.2008-007324*

Due and timely service is hereby admitted.

New York, N.Y., 200.....

..... Esq.

Attorney for.....